

TENTATIVE RULINGS for CIVIL LAW and MOTION

September 3, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: Christopher-Miles v. Adams et al.

Case No. CV CV 08-2503

Hearing Date: September 3, 2009 **Department Fifteen** **9:00 a.m.**

Defendants' Motion to Strike Portions of the Third Amended Complaint:

Defendants' motion to strike portions from the third amended complaint is **GRANTED IN PART WITHOUT LEAVE TO AMEND AS FOLLOWS:** The Court strikes: (1) the word individually, from the caption as it relates to Jorge Ayala (Third Amended Complaint, p. 1:16); (2) "and as an individual" as it relates to Jorge Ayala (Third Amended Complaint ¶ 4, p. 2:15 & ¶5, p. 2:19); (3) the words "The Fair Employment and Housing Commission defines sexual harassment to include unwanted and unwelcome visual or verbal conduct that is "of a sexual nature" or offensive third-party conduct which the victim is subjected. (Cal. Code of Regulations, Title 2, section 7287.6.)" (Third Amended Complaint ¶ 52, p.13:19-22); and (4) paragraph 8 in the prayer for relief. (Code Civ. Proc., §§ 425.10 & 435 *et seq.*)

Defendants' Demurrer to Plaintiff's Third Amended Complaint:

Defendants' demurer to the third amended complaint is **SUSTAINED IN PART WITHOUT LEAVE TO AMEND AND OVERRULED IN PART AS FOLLOWS:**

Defendants' demurrer to the first cause of action for sexual harassment and the fifth cause of action for unlawful harassment is **SUSTAINED WITHOUT LEAVE TO AMEND.** (Code Civ. Proc., § 430.10, subd. (e).) To establish a prima facie case of sexual and unlawful harassment plaintiff must show that the harassment was sufficiently severe or pervasive to alter the conditions of the plaintiff's employment and create an abusive working environment. (Gov. Code, § 129040, subd. (j)(1); *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 608-609.) Plaintiff failed to state facts sufficient to show that the harassment was sufficiently severe or pervasive to create an abusive working environment. (*Fisher v. San Pedro Peninsula Hospital, supra*, 214 Cal.App.3d at 608-609.)

Defendants' demurrer to the fourth cause of action for unlawful discrimination based on sex and the sixth cause of action for failure to prevent discrimination is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e); Gov. Code, § 12940; *Vincent v. Brewer Co.* (6th Cir. 2007) 514 F.3d 489, 494.) Plaintiff alleges sufficient facts to state a cause of action for sex discrimination and a cause of action for failure to prevent the discrimination.

The Court notes that plaintiff's opposition to the motion to strike was filed late. (Code Civ. Proc., § 12.) The Court also notes that plaintiff's third amended complaint was also filed late. The Court will not consider any late filed papers in the future.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Garabedian v. JC Produce, LLC**
Case No. CV CV 08-2826

Hearing Date: **September 3, 2008** **Department Fifteen** **9:00 a.m.**

David Cohen and Cohen Durrett, LLP's unopposed motion to be relieved as counsel of record for defendant JC Produce, LLC is **GRANTED**. (Cal. Rules of Court, rule 3.1362.) This order is not effective until a proof of service is filed with the Court showing service of a copy of the signed order on the client. (Cal. Rules of Court, rule 3.1362(e).) Counsel shall promptly serve the clients with a copy of the signed order.

The Court notes that David Cohen and Cohen Durrett, LLP represents AG Logistics, LLC and Club Fresh, LLC, the other defendants in this matter. No motion to be relieved as counsel has been brought as to these defendants.

TENTATIVE RULING

Case: **McBride v. Barry**
Case No. CV PO 08-1298

Hearing Date: **September 3, 2009** **Department Fifteen** **9:00 a.m.**

M. Tracy Johnson, M.D.'s motion to quash the service of the summons, complaint and amendment to complaint and to dismiss the complaint against him is **DENIED**. (Code Civ. Proc., § 474; *Munoz v. Purdy* (1979) 91 Cal.App.3d 942; Declaration of David McBride ¶¶ 7-9; Declaration of Sherri McBride ¶¶ 6-9.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **People v. \$3,500 and \$298.00 (Cheyenne Nicole Drew)**
Case No. CV PT 09-2014

Hearing Date: **September 3, 2009** **Department Fifteen** **9:00 a.m.**

The hearing in this case must be by jury, unless waived by consent of all parties. (Health and Safety Code, § 11488.5, subd. (c)(2).) This matter is ordered to be tried in conjunction with the related criminal action, Yolo County Superior Court Case No. CR F 09-3435. (Health and Safety Code, § 11488.4, subds. (i)(3) and (i)(5).

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Soong v. Chang**
Case No. CV CV 07-914

Hearing Date: **September 3, 2008** **Department Fifteen** **9:00 a.m.**

Plaintiffs Edward Soong and Caroline Soong's motion for relief from the waiver of their objections to defendants Ching Yin Chang and Lucy Zoyun Chang's Request for Production of Documents, Sets No. Two to the plaintiffs is **GRANTED**. (Code Civ. Proc., § 2031.300.)

Plaintiffs shall serve a copy of this ruling on counsel for the defendants by facsimile and mail by no later than September 4, 2009.

Defendants shall file a motion or motions to compel further responses to their Request for Production of Documents, Sets No. Two to the plaintiffs, if any, by no later than October 23, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.